IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

MICHELLE LYNN BIGGS,)
Plaintiff,)
v.) Case No. CIV-23-742-D
MARTIN O'MALLEY, ¹ Commissioner of Social Security,)))
Defendant.))

ORDER

Before the Court is Plaintiff's Application for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. §2412 [Doc. No. 13]. Plaintiff seeks an award of fees in the amount of \$5,321.70 to compensate her attorney for legal services provided in the case (21.9 hours of attorney time). Plaintiff is the prevailing party in this action under 42 U.S.C. § 405(g) by virtue of the Order of Remand [Doc. No. 11] and Judgment [Doc. No. 12] entered November 14, 2023. Defendant has responded by stating that he does not contest an award of attorney fees of \$5,321.70 payable to Plaintiff, consistent with *Astrue v. Ratliff*, 560 U.S. 586, 595-98 (2010), *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007), and *Brown v. Astrue*, 271 F. App'x 741, 743-44 (10th Cir. 2008). *See* Def.'s Resp. [Doc. No. 16] at 2.

¹ Mr. O'Malley became the Commissioner of Social Security on December 20, 2023. *See* Def.'s Resp. [Doc. No. 16] at 1 n.1. Under FED. R. CIV. P. 25(d), he is "automatically substituted as a party."

After consideration of the law and the case record, and accepting the representations

in Defendant's Response, the Court finds: (1) the Commissioner's position in the case was

not substantially justified; (2) Plaintiff is entitled to an award of attorney fees under the

Equal Access to Justice Act, 28 U.S.C. § 2412(d); and (3) the amount of fees is reasonable.

IT IS THEREFORE ORDERED that Plaintiff's Application for Award of

Attorney's Fees Pursuant to the Equal Access to Justice Act 28 U.S.C. §2412 [Doc. No. 13]

is **GRANTED**. The Court orders an award of attorney fees to Plaintiff pursuant to the Equal

Access to Justice Act in the amount of \$5,321.70. Should an additional fee award under 42

U.S.C. § 406(b) subsequently be authorized, Plaintiff's attorney shall refund the smaller

amount to Plaintiff as required by Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 1st day of February, 2024.

TIMOTHY D. DeGIUSTI

Chief United States District Judge